

HOUSE BILL 3690  
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 23, Chapter 3, relative to requirements for filing pleadings, motions and other legal papers in civil actions and the sanctions for violating such requirements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 23, Chapter 3, is amended by adding the following as a new part:

§23-3-301.

(a) Every pleading, written motion, and other paper filed in a civil action shall be signed by at least one (1) attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party.

(b) Each paper shall state the signer's address, telephone number, and Tennessee board of professional responsibility number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

§23-3-302.

(a) By presenting to the court a pleading, written motion, or other paper in a civil action, an attorney is certifying that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, such pleading written motion or other paper:

(1) Is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation;

(2) Contains claims, defenses, and other legal contentions that are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) Contains allegations and other factual contentions that have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) Denies only factual contentions that are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(b) For purposes of this part, an attorney is “presenting to the court” a pleading, written motion or other paper if the attorney signs it, files or submits it, or later advocates it.

§29-3-303.

(a) If, after notice and a reasonable opportunity to respond, the court determines that §23-3-302 has been violated, the court shall impose an appropriate sanction, as provided in §23-3-304, upon the attorneys, law firms, or parties that have violated §23-3-302, or are responsible for the violation.

(b) A motion for sanctions, pursuant to §23-3-304, shall be made separately from other motions or requests and shall describe the specific conduct alleged to be in violation of §23-3-302. It shall be served on the party as

provided in Rule 5 of the Tennessee rules of civil procedure. The party alleged to have violated this section shall have up to twenty-one (21) days after service of the motion to withdraw or appropriately correct the challenged paper, claim, defense, contention, allegation, or denial. For good cause shown, the court may extend or reduce such twenty-one (21) day period. If no corrective action or withdrawal occurs within the specified time period, the court shall determine if a violation of §23-3-302 has occurred.

(c) If the court finds that a violation of §23-3-302 has occurred and sanctions are warranted, it shall award to the party prevailing damages as set out in §23-3-304.

(d) On its own initiative, the court may enter an order describing the specific conduct that appears to the court to violate §23-3-302, and directing an attorney, law firm, or party to show cause why it has not violated §23-3-302, with respect thereto.

§23-3-304.

(a) A sanction imposed for violation of §23-3-302 shall include such amount as is necessary to make the prevailing party whole, as well as that amount as is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.

(b) Sanctions imposed for a violation of §23-3-302 may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, and, if imposed on motion, shall include the monetary sanctions set out in subsection (c).

(c) Monetary sanctions imposed for a violation of §23-3-302 shall include:

(1) The reasonable expenses and attorney's fees incurred in presenting or opposing the motion, including fees for expert witnesses that are directly related to the violation of §23-3-302;

(2) Non-economic damages including, but not limited to, loss of income, loss of reputation and mental anguish that are directly attributable to the violation of §23-3-302; and

(3) If the court finds that the violation was so intentional, fraudulent, malicious, wanton or reckless as to constitute an egregious abuse of the courts, the court may impose punitive damages.

(d) Monetary sanctions may not be awarded on the court's initiative pursuant to §29-3-303(d), unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(e) Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(f) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of §23-3-302, and explain the basis for the sanction imposed.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.